

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ERVIN TRIPLETT, JR.,

Plaintiff,

vs.

**Case No.: 2:19-cv-789
JUDGE GEORGE C. SMITH
Magistrate Judge Vascura**

DANIEL B. HEMPHILL, et al.,

Defendants.

ORDER

On March 12, 2019, the United States Magistrate Judge issued a *Report and Recommendation* recommending that the Plaintiff's Motion to proceed *in forma pauperis* be denied pursuant to the "3 strikes provision" of 28 U.S.C. §1915, because Plaintiff has previously filed numerous frivolous lawsuits and appeals. Further, it was recommended that if Plaintiff intends to pursue this action, he must pay the full \$400.00 filing fee within thirty days. (*See Report and Recommendation*, Doc. 3).

The parties were advised of their right to object to the *Report and Recommendation*. This matter is now before the Court on Plaintiff's Objections to the *Report and Recommendation*. (*See* Doc. 6). The Court will consider the matter *de novo*. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

In the Report and Recommendation, the Magistrate Judge correctly stated that Plaintiff may not proceed *in forma pauperis* unless he falls within the statutory exception set forth in §1915(g), which applies to prisoners who are "under imminent danger of serious physical injury." "[T]he imminent danger exception is essentially a pleading requirement subject to the ordinary principles of notice pleading." *Vandiver v. Prison Health Servs., Inc.*, 727 F.3d 580, 585 (6th Cir. 2013).

Based on this, Plaintiff now asserts in his Objections to the *Report and Recommendation* that he has sufficiently pled in his Complaint, paragraphs 7, 32, 33, 76, 77, 84, 95-98, that show he is in imminent danger.

The Court has carefully reviewed Plaintiff's Complaint and agrees with the Magistrate Judge's conclusions that none of the facts of Plaintiff's Complaint demonstrate that he meets the statutory exception set forth in §1915(g). Plaintiff uses the phrases "imminent danger" "imminent threat" and "ongoing threat" however the facts surrounding these allegations show the conduct occurred in the past and there is no ongoing threat or imminent danger.

The Court has carefully considered Plaintiff's objections. However, the Court finds that the Magistrate Judge's conclusions are correct. Therefore, for the reasons stated above and as set forth in detail in the *Report and Recommendation*, this Court finds that Plaintiff's objections are without merit and are hereby **OVERRULED**.

The *Report and Recommendation*, Document 3, is **ADOPTED** and **AFFIRMED**. Plaintiff's Motion for Leave to Proceed *In Forma Pauperis* is hereby **DENIED**. Plaintiff must pay the full \$400 filing fee (\$350 filing fee, plus \$50 administrative fee) within thirty (30) days of the issuance of this Order. If the filing fee is not paid in full within thirty days, this action will be dismissed. Additionally, Plaintiff's Motion for Preliminary Injunction is **DENIED** at this time, subject to refiling if Plaintiff pays the filing fee.

The Clerk shall remove Documents 1, 2, and 3 from the Court's pending motions list.

IT IS SO ORDERED.

/s/ George C. Smith
GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT